

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4173 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANWARBHAI MUNIRBHAI SOLANKI

Versus

SHEHNAZBANU ANWARBHAI SOLANKI

Appearance:

MR MM TIRMIZI for Petitioner

Mr. L.R. Poojari, APP for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 08/10/98

ORAL JUDGEMENT

Being aggrieved by the judgment and order dated 4th October, 1998, passed by the learned Metropolitan Magistrate, Court No.12 at Ahmedabad, in Criminal Misc. Application No. 83 of 1996 on his file allowing the same and ordering the petitioner to pay the maintenance to opponent No.1 at the rate of Rs. 500/- per month and opponent No.2 at the rate of Rs. 400/- per month, in all Rs. 900/- per month, the original-opponent (the petitioner) has preferred this Application.

2. The facts which led the petitioner to prefer this petition may in brief be stated. On 22nd May 1998 he married the opponent No.1 as per the custom and rites under Muslim Law. Initially their marriage life was very happy but later on for one or another reason dissension arose between the two. Often the petitioner was demanding dowry and was ill-treating the opponent No.1. She was also beaten. Before about 3 years the petitioner left the opponents - his wife and his son at the father's place of opponent No.1 and thereafter took no care to maintain them and also made no provision for their maintenance. He disregarded his obligation to maintain them though he was earning Rs. 15,000/- to Rs.20,000/per month by doing the work of building construction. As the opponents No. 1 & 2 were neglected and were facing vitrolic problems qua their maintenance & survival, they filed the application for maintenance under Section 125 of the Cr.P.C. against the present petitioner which was registered as Criminal Misc. Application No. 83/96.

3. The learned Metropolitan Magistrate, undergoing the procedural formalities, recorded the evidence adduced by both the parties and appreciating the evidence before him, he reached the conclusions that the petitioner without any cause refused to maintain the opponents Nos. 1 & 2 and neglected his obligation though he was earning well & capable too. He therefore allowed the application and ordered the petitioner to pay the maintenance of Rs. 900/- per month as stated hereinabove. The petitioner, feeling aggrieved by such order, has filed this application challenging the legality and validity of the order.

4. It is the contention of the petitioner that he married in accordance with Muslim Personal Law and later on he had given divorce to opponent No.1. After divorce the proceeding under Section 125 Cr.P. Code. As that provision would not be applicable mainly because Section 3(1)(a) of the Muslim Woman (Protection of Rights on Divorce) Act, 1986 would come into play. The learned advocate for the petitioner further contends that non-obstinate clause appearing in Section 3 makes it clear that even if one or other laws for the time being in force provide to claim maintenance a Muslim woman is not entitled to the maintenance under Section 125 of the Criminal Procedure Code. The Muslim woman is entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by the former husband and not beyond the said period. After the iddat period is over, the liability of the Muslim husband ceases. In support of his such contention, he has cited

several decisions namely, Usman Khan Bahamani Vs. Fathimunnisa Begum and others - 1990 Criminal Law Journal 1364 (A.P.); Sk. Nasiruddin Vs. Dulari Bibi and others - 1991 Criminal Law Journal 2039 (Orissa); Sk. Abubakkar Vs. Mst. Ohidunnessa Bibi 1992 Criminal Law Journal 2826 (Cal.); M. Subhan Vs. Smt. Maqbul Bee and another - 1992 Criminal Law Journal 2612 (A.P.); Hyderkhan Vs. Meharunnissa - 1993 Criminal Law Journal 236 (Ker.); Allabuksh Karim Shaikh Vs. Smt. Noorjahan Allabuksh Shaikh & Anr. - 1994 Criminal Law Journal 2826 (Bom.); Mohammed Jahir Vs. Nazrath Fatima 1995 Criminal Law Journal 3822 (K.N.T.); Sk. Allauddin Vs. Shamima Akhtari and Anr. - 1995 Criminal Law Journal 228 (Orissa); Mst. Noor Jehan, W/o. Salim Vs. State of Maharashtra - 1995 Criminal Law Journal 2154 (Nag.); Shaik Dada Saheb Vs. Shaik Mastan Bee & Anr. 1995 Criminal Law Journal 696 (A.P.); K. Kunhammed Haji Vs. K. Amina and another - 1995 Criminal Law Journal 3371 (Ker.); Begum Bibi and Others Vs. Abdul Rajak Khan 1995 Criminal Law Journal 604 (Orissa); Md. Sharif Vs. State of Orissa - 1996 Criminal Law Journal 2826 (Calcutta); Shahadabi M. Isak Vs. Abdul Aji Abdul Latif and Others - 1996 Criminal Law Journal 1812 (Bom.); Nazir Ahmed Ansari Vs. Lateef Bi & Others - 1996 Criminal Law Journal 1548 (A.P.); Shahida Begum Vs. Abdul Majid 1997 Criminal Law Journal 2229 (Rajasthan); P. Karrem Saheb Vs. Smt. Raheemunnisa and another 1997 Criminal Law Journal 3694 (A.P.); Rukiya and Anr. Vs. Mohammed 1997 Criminal Law Journal 723 (K.N.T.).

5. No doubt, some of the decisions cited by Mr. Tirmizi, the learned advocate representing the petitioner, support his contention, but the law made clear by this Court on the point in issue has to be followed. In the case of Arab Ahmedbin Abdulla Vs. Arab Bail M. Saiyadbhai & Another - 1988 (1) G.L.H. 294 = AIR 1988 Guj. 141, this Court keeping in mind several provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986, made it clear that the Muslim woman is entitled to have a reasonable and fair provision from her former husband. "Reasonable and fair provision" would include provision for her future residence, clothes, food and other articles for her livelihood. Section 3 (1)(a) of the Act 1986 cannot be interpreted to mean that it restricts the right to claim maintenance only for iddat period for there is nothing in the Act which provides that the Muslim woman is entitled to get reasonable and fair maintenance only during the period of iddat. She is also entitled to reasonable amount of maintenance for a period subsequent to the iddat till the Muslim woman marries again. The Magistrate has therefore

to satisfy that the husband of the Muslim woman though having sufficient means has failed or neglected to make or pay her within the iddat period a reasonable amount of maintenance. After taking into consideration this fact he can pass an order directing the former husband to pay such reasonable and fair amount of maintenance to the divorced woman as he may determine as just and proper having regard to the needs of the woman, the standard of life enjoyed by that woman during her married life and the means of her former husband. It is also made it clear that the Muslim Women (Protection of Rights on Divorce) Act, 1986 does not take away the right available to Muslim woman under the Criminal Procedure Code or the personal law and this Act does not set at naught the principles laid down by the Supreme Court in Shahabanu's case but rather codifies the said principles. In short, what is made clear is that the Muslim Women (Protection of Rights on Divorce) Act, 1986, does not take away the right of the Muslim woman either under personal law or general law to claim maintenance even for a period other than the period of iddat after being divorced. When accordingly this Court has made it clear, the contention raised by the petitioner's learned advocate must fail. The above decision cited lays down the law so far as those respective States are concerned, and they are in no way binding upon this Court.

6. It was next contended that the learned Metropolitan Magistrate has not appreciated the evidence on record in correct perspective and ignoring the material evidence concluded erroneously in favour of opponents No. 1 & 2. I cannot give a seal of approval to the contention raised. On perusal of the Judgment rendered by the learned Metropolitan Magistrate, nowhere I find that appreciation of evidence made is arbitrary, perverse or capricious. On the contrary, it is in consonance with the rules of evidence and provisions of law applicable. The Judgment rendered was read carefully by the learned advocate and on putting query whenever the point was discussed, the learned advocate, though tried his best, failed to convince me pointing out any thing from the record supporting his contention. On no other ground, submissions are made.

7. For the aforesaid reasons, this Criminal Revision Application is not maintainable. It is, therefore, required to be dismissed at the threshold rather than admitting the same and rejecting the same at last. In the result, this Criminal Revision Application is hereby rejected. Notice discharged.

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